



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James Lamb, Esq.
Sandler, Reiff & Young, P.C.
300 M Street S.E.
Suite 1102
Washington, D.C. 20003

APR - 3 2009

RE: MUR 6073
Patriot Majority, Patriot Majority West,
Patriot Majority Midwest, Patriot Majority
New Mexico, and Craig Varoga

Dear Mr. Lamb:

On September 22, 2008, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 2, 2009, the Commission found, on the basis of the information in the complaint, that there is no reason to believe Patriot Majority, Patriot Majority West, Patriot Majority Midwest, Patriot Majority New Mexico and Craig Varoga violated 2 U.S.C. §§ 433, 434, 441a(f) and 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the cases will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Sid Rocke".
Sid Rocke
Assistant General Counsel

Enclosure
Factual and Legal Analysis

29044234203

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6073

RESPONDENTS:

**PATRIOT MAJORITY
PATRIOT MAJORITY WEST
PATRIOT MAJORITY MIDWEST
PATRIOT MAJORITY NEW MEXICO
CRAIG VAROGA**

I. INTRODUCTION

Patriot Majority, Patriot Majority West, Patriot Majority Midwest and Patriot Majority New Mexico (also referred to as "PM 527s") are all entities organized under Section 527 of the Internal Revenue Code. The complaint in this matter alleges that the PM 527s and Craig Varoga, who has executive positions in all of the PM 527s (collectively referred to as "Respondents"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to register with the Commission as political committees and properly disclose their activities in reports filed with the Commission after exceeding the \$1,000 threshold necessary to trigger political committee status under the Act. The complaint alleges that the PM 527s exceeded the \$1,000 threshold by making expenditures for television advertisements opposing nine Federal Republican candidates in various 2008 congressional races. In addition, the complaint alleges that the PM 527s exceeded the \$1,000 threshold by accepting contributions, including large amounts from labor organizations.

In response to the complaint, the Respondents assert that none of their solicitations implicate 11 C.F.R. § 100.57 because they "carefully did not solicit a gift, subscription, loan, advance, or deposit of money or anything of value with a communication that indicates any portion of the funds received will be used to support or

29044234204

oppose a clearly identified Federal candidate.” In addition, they contend that they have not made expenditures that would trigger political committee status under the Act because none of their communications contain express advocacy nor are they the “functional equivalent” of express advocacy as defined by the Supreme Court in *FEC v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652 (2007).

Based on available information discussed below, the Commission finds no reason to believe that the Patriot Majority 527s violated the Act as alleged in the complaint and closes the file as to all respondents.

II. FACTUAL SUMMARY

According to the disclosures filed with the Internal Revenue Service (“IRS”), Patriot Majority (“PM”) was established on December 23, 2005, Patriot Majority West (“PM West”) was established on January 12, 2008, Patriot Majority Midwest (“PM Midwest”) was established on March 8, 2006, and Patriot Majority New Mexico (“PM New Mexico”) was established on May 4, 2008. All entities are based in Washington, D.C., and file reports with the IRS under Section 527 of the Internal Revenue Code. 26 U.S.C. § 527. None of these entities have registered with the Commission as political committees. On the IRS Forms 8871, all of the organizations indicate that their purpose is “to communicate with the public on issues of importance that does not expressly advocate the election or defeat of any candidate for local, state or federal office.”¹

All four entities have the same address, and Chris Varoga is listed as one of the two directors for PM, PM Midwest, PM West and the Custodian of Records for PM New

¹ The only differences in the purpose statements is that PM Midwest specifies that it is communicating with residents of the Midwestern United States and PM West specifies that it is communicating with residents of the Western United States. See Forms 8871s.

Mexico. See Forms 8871s. According to one media account, Chris Varoga was the manager of former Iowa Governor Tom Vilsack's presidential campaign.² More recently, he formed Patriot Majority for a Strong America, an entity registered with the IRS under section 501(c)(4).³

On its IRS Form 8872s, PM reported contributions of over \$8.1 million, with over \$7.5 million of that amount from labor unions, and expenditures of over \$8 million during the period of May 12, 2008 through October 17, 2008. PM West reported contributions of over \$2.1 million, with over \$755,000 of that amount from a labor union, and expenditures of over \$1.9 million during the period of July 1, 2008 through October 22, 2008. PM Midwest reported contributions of over \$4.1 million, with over \$4 million of that amount from a labor union, and expenditures of over \$3.98 million during the period of July 17, 2008 through October 21, 2008. Lastly, PM New Mexico did not report receiving any contributions or making any expenditures during 2008. It appears that none of the individual contributions made to PM and PM West, in particular, exceeded the contributions limitations applicable to political committees under the Act.⁴

The PM 527s activities and public statements appear to be directed towards providing information regarding federal officeholders and candidates' stances on topics such as health care, veteran care, and senior prescriptions as well as providing general information regarding national security, economy, education, energy independence,

² Varoga is also said to be affiliated with several other groups such as Bluegrass Freedom Fund, American Alliance for Energy Independence, and American Public Policy Committee.

³ See <http://www.patriotmajoritytoday.com/>.

⁴ According to the Forms 8872s filed with the IRS for PM Midwest and PM New Mexico, there were no individual contributions made to either entity during 2008.

health care and public safety to the public.⁵ The electioneering communications reports filed with the Commission reflect that the PM 527s collectively spent over \$9 million on twenty-four (24) advertisements that contained references to nineteen (19) Federal candidates and the relevant electorate. The complaint specifically refers to ten (10) television advertisements with references to nine (9) of those Federal candidates. The details regarding the advertisements specifically referred to in the complaint are as follows:

<u>Advertisement Title</u>	<u>Airer</u>	<u>Air Dates</u>	<u>Disbursement Amount⁶</u>
"Struggling" – Cong. Chabot (OH)	PM Midwest	7/28-8/10/08	Unknown
"Support Our Troops" – Cong. Diaz-Balart (FL)	PM	9/08-9/28/08	\$567,240
"Clobbered" – Cong. Knollenberg (MI)	PM Midwest	9/9-9/27-08	\$450,000
"Choice" – Cong. Pearce (NM)	PM Midwest	8/01-8/21/08	Unknown
"Overblown" – Cong. Schmidt (OH)	PM	Spring 2007	Unknown
"Paying For It" – State Sen. Schuring (OH)	PM Midwest	9/9-9/29/08	\$100,000
"Struggle" – State Sen. Stivers (OH)	PM Midwest	9/20-10/5/08	\$387,340
"Trickle" – State Sen. Stivers (OH)	PM Midwest	9/8-9/19-08	\$458,500
"\$155 Billion" – Cong. Sununu (NH)	PM	9/4-9/29/08	\$900,000
"Future" – Cong. Walberg (MI)	PM Midwest	7/23-8/8/08	\$297,000

The additional advertisements aired by the PM 527s referencing federal candidates, not included in the complaint, are as follows:

⁵ See <http://www.patriotmajority.com>.

⁶ The response states that "Struggling" was aired during the time period of 7/28-8/10/08 and "Choice" was aired during the time period of 8-1-21/08 which were outside of the 60 day time period required for disclosing electioneering communications on Form 9s pursuant to 11 C.F.R. § 100.29(a)(2). Therefore, the details of these particular communications are not found in PM Midwest's Form 9 filings. In addition, "Overblown" was apparently aired in Spring 2007 which would also be outside of the 60 day time period required disclosing electioneering communications on Form 9s.

MUR 6073 (Patriot Majority 527s)
Factual and Legal Analysis

<u>Advertisement Title⁷</u>	<u>Airer</u>	<u>Air Date(s)</u>	<u>Disbursement Amount</u>
"In America – Cong. Eric Paulsen (MN)	PM Midwest	9/22/08 & 10/6/08	\$615,500 ⁸
"Vet's Promise" – Cong. Eric Paulsen (MN)	PM Midwest	9/22/08 & 10/6/08	\$615,500
"Sweatshop" – Fmr. Cong. Bob Schaffer (CO)	PM	10/3/08	\$165,000
"Sweatshop"	PM	10/8/08	\$120,000
"The Breaks" – Cong. Randy Kuhl (NY)	PM	10/6/08	\$370,500 + \$8,500 (production expense)
"Reckless" – Sen. John Sununu (NH)(radio ad)	PM	10/20/08	\$194,650 + \$8,500 (production expenses)
"Down the Drain" – Sen. Gordon Smith (OR)	PM	10/20/08	\$161,400 + \$8,500 (production expense)
"Down the Drain"	PM	10/27/08	\$235,500
"Down the Drain"	PM	10/27/08	\$235,500
"Change" – Sen. Saxby Chambliss (GA)	PM	10/27/08	\$707,000
"Change"	PM	10/27/08	\$200,000 + \$8,500 (production expense)
"Change"	PM	10/29/08	\$238,090
"Choices" – Sen. Saxby Chambliss (GA)	PM	11/24/08	\$461,500 + \$8,500 (production expense)
"Damage" – Sen. Saxby Chambliss (GA)	PM	10/27/08	\$202,250 + \$8,500 (production expense)
"Tar Heels" – Sen. Elizabeth Dole (NC)	PM	10/27/08	\$455,625
"Tar Heels"	PM	10/27/08	\$559,125 + \$8,500 (production expense)
"Tar Heels"	PM	10/29/08	\$260,053
"Surplus" – Darren White	PM West	9-25/08	\$200,000 + \$12,000 (production expense)
"Surplus" – Darren White	PM West	9/30/08	\$140,000
<u>Advertisement Title</u>	<u>Airer</u>	<u>Air Date(s)</u>	<u>Disbursement Amount</u>

⁷ It appears that some of the advertisements contained in the chart were aired during more than one time period according to the Form 9s and the Forms 8872s filed by the PM 527s, although the content appears to have been the same.

⁸ The relevant Form 9 lists the disbursement for "In America" and "Vet's Promise" in one lump sum such that it is not possible to determine the individual amount of each ad, but rather only that the total disbursement for both advertisements was \$615,500.

**MUR 6073 (Patriot Majority 527s)
Factual and Legal Analysis**

"Hit" ⁹ - Cong. Bill Sali (ID)	PM West	10/26/08	\$110,000 +\$8,420 (production expense)
"Called"	PM West	10/11/08	\$200,000
"Damage" - Sen. Roger Wicker	PM	10/27/08	\$155,500
"The Basics" - Frm. State. Rep. Ann Kirkpatrick (radio ad)	PM West	10/24-28/08	\$7,500

Below is a representative example of the type of advertisement aired by the PM

527s during the 2008 election cycle:

**Ad Transcript #2
Steve Chabot
"Struggling"**

Visual	Audio
<i>It's a shame</i>	IT'S A SHAME.
<i>[Picture of gas prices increasing at pump] Steve Chabot The Problem in Washington</i>	GAS PRICES ARE HURTING OHIO, BUT OUR CONGRESSMAN --STEVE CHABOT IS PART OF THE PROBLEM IN WASHINGTON. WE'RE STRUGGLING TO MEET RISING FOOD COSTS, AND SKY HIGH GAS PRICES,
<i>Rising food & gas prices</i>	
<i>Steve Chabot supported tax breaks for companies... NOT ONCE NOT TWICE FIVE TIMES - BILLIONSSSS</i>	BUT INSTEAD OF HELPING US, CONGRESSMAN CHABOT SUPPORTED TAX BREAKS FOR OIL COMPANIES. NOT ONCE, NOT TWICE, BUT FIVE TIMES.
	CHABOT VOTED FOR BILLIONS IN SPECIAL TAX BREAKS TO OIL COMPANIES, EVEN THOUGH THEY'RE MAKING RECORD PROFITS.
<i>Tell Steve Chabot Stop siding with Big Oil Stop siding with Big Oil Men (513) 684-2723 Paid for by Patriot Majority Midwest</i>	TELL STEVE CHABOT TO STOP SIDING WITH BIG OIL. ..AND BIG OILMEN.

⁹ The Form 9s list two different air dates for "Hit" and "Called" but appears to use both terms to describe what could be only advertisement. In addition, the PM website only contains the advertisement named "Called" which presents the possibility that the advertisements "Hit" and "Called" are one in the same. Accordingly, for the sake of the report, we are viewing them as one advertisement.

PM maintains a website that contains links to information on PM West and PM Midwest.¹⁰ The "Patriot TV" link on PM's website contains media player clips of the television advertisements that were aired by PM, PM West and PM Midwest during the 2008 election cycle.¹¹ The website does not, however, appear to include any solicitation for funds.

III. LEGAL ANALYSIS

The Act defines a "political committee" as any committee, club, association, or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). The Commission has long applied the Court's major purpose test in determining whether an organization is a "political committee" under the Act, and it interprets that test as limited to organizations whose major purpose is federal campaign activity. *See* Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007).

¹⁰ *See* <http://www.patriotmajority.com>.

¹¹ According to the Respondents, the "Overblown" advertisement featuring Congresswoman Schmidt was aired in the springtime of 2007 and not during the 2008 election cycle. Congressman Schmidt was not up for re-election in 2008.

Based on a review of the complaint and response, as well as the publicly available advertisements run by the PM 527s, and the information contained on their website, there is no information available at this time suggesting that any of the PM 527s may have made over \$1,000 in expenditures or received over \$1,000 in contributions.¹²

A. There is No Information Suggesting the PM 527s Have Made Expenditures Exceeding \$1,000.

The term "expenditure" is defined to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing an election for Federal office." See 2 U.S.C. § 431(9)(A)(i). In determining whether an organization makes an expenditure, the Commission "analyzes whether expenditures for any of the organization's communications made independently of a candidate constitute express advocacy either under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b)." See Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5605 (Feb. 7, 2007). Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," or "Smith for Congress," or uses campaign slogans or individual words, "which in context can have no other reasonable meaning than to urge the election or defeat of one of more clearly identified candidate(s)...." See 11 C.F.R. §100.22(a); *Buckley v. Valeo*, 424 U.S. 1, 44 n. 52 (1976); see also *MCFL*, 479 U.S. at 249.

The second part of this regulation encompasses a communication that, when taken as a whole or with limited reference to external events, "could only be interpreted by a

¹² Because there is no information available suggesting that the PM 527s made expenditures or received contributions, we do not address whether the PM 527s meet the major purpose test.

reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because" it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." See 11 C.F.R. § 100.22(b). In its discussion of then-newly promulgated section 100.22, the Commission stated that "communications discussing or commenting on a candidate's character, qualifications or accomplishments are considered express advocacy under the new section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question." See 60 Fed. Reg. 35292, 35295 (July 6, 1995).

PM, PM Midwest and PM West apparently distributed a total of twenty-three (23) advertisements during the 2008 election cycle and one advertisement in 2007 (Cong. Jean Schmidt) that referenced Federal candidates. While they clearly criticize the voting records and positions of Federal candidates on various issues, the advertisements do not contain phrases, individual words, or slogans that are subject to no reasonable interpretation other than to urge the election or defeat of a clearly identified Federal candidate. See 11 C.F.R. § 100.22(a). Further, the advertisements do not contain an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" upon which reasonable minds could differ as to whether it encourages electoral or some other action. See 11 C.F.R. § 100.22(b). The advertisements focus on the federal candidate's record or position on an issue without reference to character or fitness for office and end with asking the viewer or listener to contact the candidate at the

telephone numbers provided and tell him or her to stop taking a specific action.¹³

Viewing the advertisements as a whole, one can reasonably conclude that they are being asked to contact the federal candidate and urge them to take a specific position on an issue or legislation. Therefore, there is no information that the PM 527s may have made expenditures exceeding \$1,000.

B. There is No Information Suggesting the PM 527s Have Received Contributions Exceeding \$1,000.

The term "contribution" is defined to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). A gift, subscription, loan, advance, or deposit of money or anything of value made by any person in response to any communication is a contribution to the person making the communication if the communication indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate.

11 C.F.R. § 100.57(a).

The complaint specifically alleges that the PM 527s received contributions under 11 C.F.R. § 100.57. No information has been presented, however, regarding how the PM 527s solicited funds, and the sworn affidavit submitted by Craig Varoga, in conjunction with the response, avers that none of the solicitations made by the PM 527s implicate 11 C.F.R. § 100.57 because they "carefully did not solicit a gift, subscription, loan, advance, or deposit of money or anything of value with a communication that indicates any portion of the funds received will be used to support or oppose a clearly identified

¹³ Referencing the past voting record of an officeholder on a particular issue does not, by itself, constitute a position on the officeholder's character, qualifications, or fitness for office. See *Electioneering Communications: Explanation and Justification*, 72 Fed. Reg. 72,899, 72903 (Dec. 26, 2007).

Federal candidate.” Further, there is no indication on the website for PM, PM Midwest and PM West that any of the entities solicited donations on their website. Therefore, there is no information that the PM 527s may have accepted contributions exceeding \$1,000.¹⁴

Therefore, the Commission finds no reason to believe that the Patriot Majority, Patriot Majority West, Patriot Majority Midwest, Patriot Majority New Mexico and Craig Varoga violated 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a) by failing to register as a political committee with the Commission; by failing to disclose its contributions and expenditures in reports filed with the Commission; by knowingly accepting contributions in excess of \$5,000; and by knowingly accepting contributions from a prohibited source.

¹⁴ The only mention of contributions on the website are contained in the “About Us” section of the PM’s website and state “contributions to Patriot Majority are not tax deductible,” “Patriot Majority does not coordinate with candidates,” and “all decisions regarding content, timing, and placement of issue advertising shall be made by the officers of Patriot Majority independently of any agent of a candidate, party committee or agent of a party committee.”